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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,391	04/04/2007	Anders Lugnet	1829	3000
20676	7590	04/02/2009	EXAMINER	
ALFRED J MANGELS 4729 CORNELL ROAD CINCINNATI, OH 452412433			PEREIRO, JORGE ANDRES	
		ART UNIT	PAPER NUMBER	
		3743		
		MAIL DATE	DELIVERY MODE	
		04/02/2009	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/563,391	LUGNET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JORGE PEREIRO	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 September 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,7-9 and 12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1,2,7 and 8 is/are allowed.

6) Claim(s) 9 and 12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 05 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 09/25/2008.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,331,107 to Philippe (herein after “Philippe”) in view of US Patent 6,196,831 to Dugue et al. (herein after “Dugue”).

Philippe

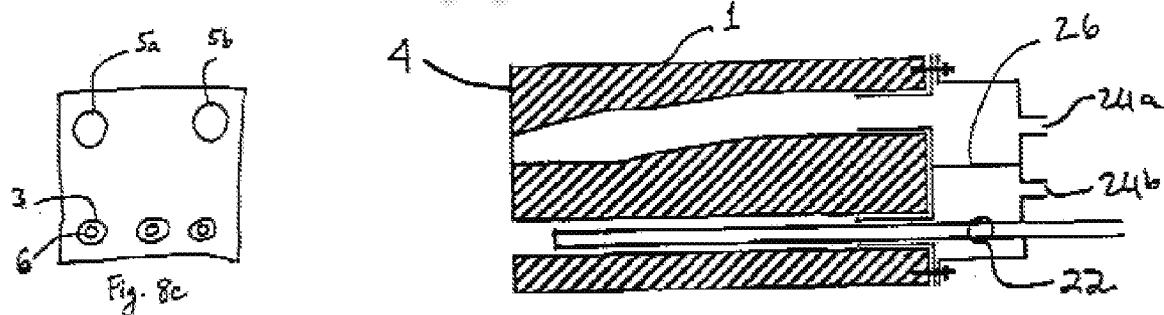


Figure 11

5. In re Claims 9 and 12, with reference to figures 8c and 11 above, Philippe discloses a burner for combusting fuel with an oxidant in a heating furnace, where the fuel and the oxidant are delivered to a burner head, said burner comprising: a burner head (4) having a diameter and including a fuel supply nozzle (6) and a first oxidant outlet opening (3) adjacent to the fuel nozzle so that combustion takes place adjacent to the burner head when the burner is operated in a first operating mode (*see* col. 4, lines 58-67 and col. 5, lines 38-41); wherein the burner head includes additional oxidant outlet openings (5a, 5b) that are located at one side of and at a distance from the fuel nozzle that exceeds half the diameter of the burner head (*see* figure 8c above), wherein oxidant delivered only to the additional oxidant openings of the burner head during a second operating mode (*see* col. 4, lines 58-67), so that combustion takes place at a distance from the burner head and outward of the burner head (*see* col. 10, lines 28-41); wherein the additional oxidant outlet openings are at least one of Laval nozzles and venturi nozzles (*see* figure 11 above).

6. However, Philippe does not disclose wherein combustion takes place at a distance from the burner head corresponding to at least a diameter of the burner head; and wherein the burner head delivers the oxidant at an overpressure of at least 2 bar.

7. Nonetheless, Dugue teaches that the distance wherein combustion takes place from the burner head is a known result effective variable.

8. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Philippe wherein combustion takes place at a distance from the burner head corresponding to at least a diameter of the burner head, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Similarly, Philippe discusses the velocity at which fuel and oxidant is injected (*see col. 10, lines 28-41*) and the relationship between the velocity of a fluid and the pressure of said fluid is well established as a result effective variable: *namely Bernoulli's principle which says that there is a relationship between the pressure of the fluid and the velocity of the fluid. When the velocity increases, the pressure decreases and vice versa.*

10. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Philippe wherein the burner head delivers the oxidant at an overpressure of at least 2 bar, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

***Allowable Subject Matter***

11. Claims 1, 2, 7 and 8 are allowed.

***Response to Arguments***

12. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see form PTO-892 (Notice of References Cited) attached to, or included with, this Office Action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE PEREIRO whose telephone number is (571) 270-3932. The examiner can normally be reached on Mon.-Fri. 9:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth B Rinehart/  
Supervisory Patent Examiner, Art Unit 3743

Jorge Pereiro  
Examiner  
Art Unit 3743

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